



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
COAL FILLERS, INC.**

FOR

**the Coal Fillers, Inc. Facility located at 271 St. Clairs Crossing, Bluefield, VA
VPDES General Permit**

**For Stormwater Discharges Associated with Industrial Activity
Storm Water Registration No. VAR052453**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Coal Fillers, Inc., regarding the Coal Fillers, Inc. Facility located at 271 St. Clairs Crossing, Bluefield, Virginia, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. “Coal Fillers, Inc.” or “CFI” means Coal Fillers, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Coal Fillers, Inc. is a “person” within the meaning of Va. Code § 62.1-44.3.
4. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Discharge” means the discharge of a pollutant.
7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “Facility” or “Site” means the Coal Fillers, Inc. facility, located at 271 St. Clairs Crossing, Bluefield, Virginia, from which discharges of stormwater associated with industrial activity occur.
9. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
11. “Permit” means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2019 and which expires on June 30, 2024. Coal Fillers, Inc. applied for registration under the Permit and was issued Registration No. VAR052453 on October 10, 2019.
12. “Registration statement” means a registration statement for coverage under a storm water general permit.
13. “Regulation” means The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*

14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. "SWP3" means Stormwater Pollution Prevention Plan.
17. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. CFI owns and operates the CFI facility located at 271 St. Clairs Crossing, Bluefield, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows CFI to discharge stormwater associated with industrial activity from the Facility to Wrights Valley Creek, in strict compliance with the terms and conditions of the Permit.
3. Wrights Valley Creek is located in the New River Basin, Class IV, Section 1g, Special Standard: u. Wrights Valley Creek is listed in DEQ's 305(b)/303(d) report as fully supporting for the aquatic life use. The recreation, fish consumption, and wildlife uses were not assessed. Although not impaired, Wrights Valley Creek is included within the boundary of the Fecal Bacteria and General Standard TMDL for the Bluestone River. The TMDL was approved by the EPA on September 20, 2004 and by the SWCB on September 7, 2006.
4. Part I.A.1.a of the Permit requires CFI to perform and document quarterly visual examinations of the quality of the storm water discharging from the Facility's outfalls.
5. During a comprehensive evaluation inspection of the Facility on May 17, 2021, DEQ staff observed that the quarterly visual examinations of storm water quality had not been properly documented.
6. CFI violated condition Part I.A.1.a of the Permit, as noted in paragraph C(5) of this Order.

7. CFI is required to develop and implement a Facility SWP3 according to requirements outlined in Part III of the Permit.
8. During the comprehensive evaluation inspection of the Facility on May 17, 2021, DEQ staff observed that the Facility had not developed and implemented a Facility SWP3.
9. CFI violated condition Part III of the Permit, as noted in paragraph C(8) of this Order.
10. On June 14, 2021, SWRO issued Notice of Violation No. NOV-W2021-06-S-0001 to CFI for the violations noted above.
11. On June 16, 2021, the CFI Plant Manager provided both a telephone response and a written response to the June 14, 2021 NOV. The Plant Manager provided background information regarding the Facility and stated that, since 2016, when he began managing the Facility, numerous control measures had been installed and efforts had been made to maintain clean outfalls and to minimize discharges into Wrights Valley Creek. CFI indicated that it first became aware of the requirement for Permit coverage in 2019 and had subsequently obtained Permit coverage in October of 2019. CFI neither denied nor disputed the violations cited in the June 14, 2021 NOV, but asserted that the violations were not willful and were attributable to an unintentional oversight. CFI advised that Facility staff had been trained and that inspections were frequently performed, but it did not have documentation of the training or inspections. CFI stated that Facility cleaning and inspection had been somewhat insufficient in the weeks just prior to the May 17, 2021 DEQ inspection due to a temporary move of a number of Facility staff to another plant located in West Virginia, along with a temporary reallocation of staff duties to oversee new equipment installation at the Facility. CFI also stated that it contacted a consultant regarding SWP3 development immediately after the May 17, 2021 DEQ inspection and issued a purchase order number to the consultant for SWP3 development on May 18, 2021. CFI indicated that it had submitted the SWP3 and both annual and quarterly inspection reports to DEQ by May 25, 2021.
12. Va. Code § 62.1-44.5 states, in part: “Except in compliance with a certificate or permit issued by the Board..., it shall be unlawful for any person to... [d]ischarge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances....”
13. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
15. The Department has issued coverage under no permits or certificates to CFI for discharge of storm water associated with industrial activity, other than under VPDES Permit No. VAR05.

16. Wrights Valley Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
17. Based on the results of the May 17, 2021 DEQ comprehensive evaluation inspection and the June 16, 2021 written response from CFI, the Board concludes that CFI has violated Va. Code § 62.1-44.5, Regulation 9 VAC 25-151-70, and the Permit, as described in paragraphs C(4) through C(11), above.
18. On May 27, 2021, CFI submitted a complete SWP3 for the Facility and a completed quarterly visual monitoring report for the second quarter of 2021, verifying that the violations described in paragraphs C(4) through C(11), above, had been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Coal Fillers, Inc., and Coal Fillers, Inc. agrees to pay a civil charge of \$5,118.75 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Coal Fillers, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Coal Fillers, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of CFI for good cause shown by CFI, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2021-06-S-0001, dated June 14, 2021. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent,

or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, CFI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CFI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. CFI declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by CFI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. CFI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. CFI shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CFI shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

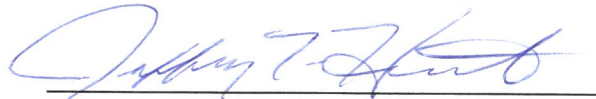
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and CFI. Nevertheless, CFI agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. the Director or his designee terminates the Order after CFI has completed all of the requirements of the Order;
 - b. CFI petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to CFI.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CFI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by CFI and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of CFI certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind CFI to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CFI.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, CFI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19th day of October, 2021.
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Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

Coal Fillers, Inc. voluntarily agrees to the issuance of this Order.

Date: 7/27/2021 By: Charles E Green, Operation Mgr.
(Person) (Title)
Coal Fillers, Inc.

Commonwealth of Virginia

City/County of Tazewell

The foregoing document was signed and acknowledged before me this 27 day of
July, 2021, by Charles Green who is
Operations Mgr of Coal Fillers, Inc., on behalf of the corporation.

Thomas Matthew Little
Notary Public

7730213
Registration No.

My commission expires: 12/31/21

Notary seal:

